
(2003) 10 JH CK 0015
In the Jharkhand High Court
Case No : Writ Petition (C) No. 3888 of 2003

Mrinal Kanti Manjhi	Vs	APPELLANT
State of Jharkhand and Others		RESPONDENT

Date of Decision : 15-10-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 JCR 105

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Jitendra S. Singh and K.K. Mishra, for the Appellant; P. Modi, GP-I, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—This writ petition has been preferred by petitioner against the order No. 4/98 dated 18th March, 1998 and 23rd August, 1998 whereby and whereunder direction was given and the given and the appointment of petitioner from the post of Dalpati was terminated.

2. The order No. 4/98 dated 18th March, 1998 has been issued on the ground that there is no provision made for the post of Dalpati under the Bihar Panchayat Raj Act, 1993 which came into effect from 23rd August, 1993.

3. The brief fact of the case is that the petitioner and some others were appointed as Dalpati after promulgation of Bihar Panchayat Raj Act, 1993. In the Bihar Panchayat Raj Act, 1993 or subsequent rule framed therein, there is no provision made for the post of Dalpati for certain period which was the ground to terminate the services of petitioner and others.

4. Similar matter fell for consideration before a Division Bench of the Patna High Court in the case of Basudeo Besra Vs. Union of India (UOI) and Others . In the said case, a Division Bench of Patna High Court held that the Bihar Panchayat Raj Act, 1993 was not applicable to the schedule areas including the districts of

Ranchi, Dumka, Pakur, Rajmahal and Santhal Pargana and set. aside the order of termination.

5. A letter No. 164 dated 9th February, 1998 on the basis of order of termination No. 4/98 dated 18th March, 1998 was issued subsequently fell for consideration before the Patna High Court in the case of Sanjay Kumar Mandal and Ors. v. State of Bihar and Ors., CWJC No. 7217 of 1998. In the said case, the Court vide its judgment and order dated 16th November, 1999 taking into consideration the decision of the Court in the case of Basudev Besra (supra), set aside the order No. 4/98 dated 18th March, 1998. This Court also vide its judgment dated 4th December, 2001 passed in WP(S) No. 3458 of 2001, Jagdish Mandal and Ors. v. State of Jharkhand and Ors. granted similar relief. Similar order was also passed by this Court on 6th February, 2002 in CWJC No. 4405 of 1999, Raj Kishor Marandi and Ors. v. State of Bihar and Ors.

6. Admittedly, the petitioner was appointed in the district of Dumka, a schedule area and thereby the Bihar Panchayat Raj Act, 1993 was not applicable in this case. In this background, this Court vide its order dated 12th August, 2003 asked the counsel of the State to obtain instruction whether the case of petitioner is also covered by the decision of this Court as referred above or not.

7. Counsel for the respondents while accepted that the case of petitioner was also covered by the decision as referred above, raised two objections, namely, (a) the delay in filing the writ petition and (b) a new Act known as Jharkhand Panchayat Raj Act, 2001 has come into force in the State of Jharkhand.

8. It is true that there is delay in filing the present case but it will not affect the respondents as this Court is not inclined to grant any consequential monetary benefit to the petitioner. If the petitioner is reinstated, no third person will be affected, no Dalpati having been appointed in the meantime.

9. So far as Jharkhand Panchayat Raj Act, 2001 is concerned, it has nothing to do with the determination of question whether the order of termination is legal or not.

10. In this background, this Court is not inclined to accept the objection as raised by the respondents as the case of petitioner is covered by the decision of this Court as referred above.

11. Accordingly, the order of termination No. 4/98 dated 18th March, 1998 and Memo No. 57 dated 23rd August, 1998 are set aside so far as petitioner is concerned. He stands reinstated with immediate effect but will not get salary of the intervening period, though the intervening period may be counted for the purpose of other benefits.

12. The writ petition is allowed, with the aforesaid observations/directions.